

E-FILED on 07/31/09

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

THOMAS CIRrito; and ATOCHA LAND,  
LLC,

Plaintiffs,

v.

RNC HOLDINGS, LLC; RONALD  
BUCHHOLZ; CHARICE FISCHER; and  
DOES 1 through 100,

Defendants.

No. C-08-03477 RMW

ORDER GRANTING MOTION TO  
WITHDRAW AS COUNSEL

[Re Docket No. 23]

The complaint in this action alleges that defendants created a real estate scheme to defraud plaintiff investors of \$1.5 million of invested securities.

Plaintiffs' attorneys from Ropers, Majeski, Kohn, and Bentley ("Ropers Majeski") now move to withdraw as counsel. Defendants have filed a statement of non-opposition. Plaintiffs have filed nothing in response. For the following reasons, the court grants the motion to withdraw.

### I. BACKGROUND

The relationship between Ropers Majeski and plaintiffs is governed by a retainer agreement executed by both parties ("the Agreement"). Declaration of Jesshill E. Love ¶ 2 (hereinafter "Love Decl."). The agreement, however, has not been provided in the record. According to Mr. Love's declaration, communication between plaintiffs and Ropers Majeski has broken down over the past

1 month, with plaintiffs failing to respond to correspondence and to indicate that future payments will  
2 be timely made. Love Decl. ¶¶ 3-4.

## 3 II. ANALYSIS

4 Under the district's local rules, counsel may not withdraw without a court order. Civil L.R.  
5 11-5(a). The court applies California's Rules of Professional Conduct to determine whether  
6 withdrawal is proper. *E.g., Cal. Native Plant Soc'y v. U.S. E.P.A.*, 2008 WL 4911162, \*1 (N.D. Cal.  
7 Nov. 14, 2008); *Elan Transdermal Ltd. v. Cygnus Therapeutic Sys.*, 809 F. Supp. 1383, 1387 (N.D.  
8 Cal. 1992). Pursuant to such rules, an attorney may seek to withdraw if the client "breaches an  
9 agreement or obligation to the member as to expenses or fees." Cal. Rule of Prof. Conduct  
10 3-700(C)(1)(f). An attorney may also seek withdraw if the client's conduct renders it unreasonably  
11 difficult for the attorney to represent the client effectively. *Id.* at (1)(d).

12 Mr. Love provides two justifications for Ropers Majeski's motion to withdraw. First, Mr.  
13 Love states that plaintiffs have not offered any indication that payments of future fees will be timely  
14 made. Love Decl. ¶ 4. This, however, is not evidence of a breach of an agreement or obligation as  
15 to expenses or fees. Rather, it is simply a concern about a possible future breach. Second, Mr.  
16 Love states that communication with plaintiffs has broken down, with plaintiffs failing to respond to  
17 correspondence. Love Decl. ¶ 3. A client's lack of communication makes it unreasonably difficult  
18 for the attorney to represent the client effectively. Ropers Majeski has notified plaintiffs and its  
19 corporate counsel of its intent to withdraw as counsel. Thus, good cause exists for Ropers Majeski's  
20 motion to withdraw, and the court grants the motion.


21 Plaintiff Cirrito, as an individual, may appear *pro se*, but plaintiff Atocha Land LLC, as an  
22 incorporated entity, may not appear *pro se*. Civil L.R. 3-9(b). Atocha Land, LLC should promptly  
23 retain counsel.

**III. ORDER**

For the foregoing reasons, the motion to withdraw is granted. Atocha Land, LLC shall have until August 14, 2009 to retain new counsel and have its new counsel file a notice of appearance. Until new counsel is retained, any papers shall be served on plaintiffs at the following addresses:

Thomas Cirrito	9163 Old Dominion Drive McLean, VA 22102
Atocha Land, LLC	Thomas Cirrito 9163 Old Dominion Drive McLean, VA 22102

DATED: 07/31/09

  
 RONALD M. WHYTE  
 United States District Judge

1 Notice of this document has been electronically sent to:

2 **Counsel for Plaintiffs:**

3 Jesshill E. Love jlove@ropers.com

4 Todd Andrew Roberts troberts@ropers.com

5 **Counsel for Defendants:**

6 Andrew A. August aaugust@pinnaclelawgroup.com

7 William W. Schofield wschofield@pinnaclelawgroup.com

8  
9 Counsel are responsible for distributing copies of this document to co-counsel that have not  
10 registered for e-filing under the court's CM/ECF program.

11  
12 **Dated:** 07/31/09

13 JAS  
14 **Chambers of Judge Whyte**